Carriage Enterprises Ltd. d/b/a Land Rover Redwood City *and* Machinists Automotive Trades District Lodge No. 190, Local Lodge No. 1414, International Association of Machinists and Aerospace Workers, AFL–CIO. Case 20–CA–29287–1

November 30, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

Pursuant to a charge filed on August 18, 1999, and a first amended charge filed on August 27, 1999, the General Counsel of the National Labor Relations Board issued a complaint on September 17, 1999, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 20–RC–17525 and by refusing to furnish the Union with information that is relevant and necessary to the performance of its duties as the exclusive collective-bargaining representative of the unit employees. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On October 19, 1999, the General Counsel filed a Motion for Summary Judgment, and the Charging Party filed a joinder in Motion for Summary Judgment. On October 21, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed responses.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of the Board's unit determination in the representation proceeding. The Respondent also admits its refusal to furnish the information requested by the Union, but asserts that the purpose of such refusal was to test the Union's certification. Further, the Respondent also contends that it is not required to supply the requested information because that information is not relevant and necessary for collective bargaining. In this regard, the Respondent argues that the Union's August 27, 1999 information request is deficient because it was made on behalf of an entity called the "joint representative," which was not identified; that the information request was not limited to unit employees; that certain of the information sought, including but not limited to employee home addresses and telephone numbers, would violate the employees' right to privacy; that the request was not limited as to the time period; that the Union failed to offer to reimburse the Respondent for its time in gathering the information or for any reasonable copying charge for the information; and that, as to certain unidentified portions of the information, the Union had reasonable alternative opportunities to obtain such information on its own. In addition, the Respondent asserts that the Union made the information request in bad faith.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).[1]

We also find that the Respondent has not raised any issue requiring a hearing with respect to the Union's request for information. Although the Union's August 27, 1999 request for information was not specifically limited to unit employees, the complaint is so limited, and the Union's subsequent letter to the Respondent of September 17, 1999, also so limits the request. In addition, the Union's September 17 letter clarified that the information was being requested on behalf of the certified union and that the request was limited to the period July 1, 1998, to the present. Further, it is well established that the compensation and employment information sought by the Union, including employees' home phone numbers, is presumptively relevant for purposes of collective bargaining and must be furnished on request.[2] The Respondent has failed to rebut this presumption. We therefore find that no material issues of fact exist concerning the Respondent's refusal to furnish the information sought by the Union.[3] Accordingly, we grant the Motion

[1] Member Hurtgen dissented from the denial of review in the underlying representation case, and he remains of that view. However, he agrees that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice case. See *Pittsburgh Plate Glass,* supra. In light of this, and for institutional reasons, he agrees with the decision to grant the General Counsel's Motion for Summary Judgment.

[2] See, e.g., *Grand River Village*, 327 NLRB 120 (1999) (not reported in Board volumes), and cases cited therein.

[3] It is clear that an employer may not refuse to furnish relevant information to a union on the ground that the union has an alternative source or method of obtaining the information. *Washington Hospital Center*, 270 NLRB 396, 401 (1984).

Further, the cost of compliance with the Union's request did not justify the Respondent's refusal to supply relevant information. *Hospital Episcopal San Lucas*, 319 NLRB 54, 57 (1995). As the Board stated in *Food Employer Council*, 197 NLRB 651 (1972):

> If there are substantial costs involved in compiling the information in the precise form and at the intervals requested by the Union, the parties must bargain in good faith as to who shall bear such costs, and, if

for Summary Judgment and will order the Respondent to bargain with the Union and to furnish the Union with the information it requested.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a California corporation, with an office and place of business in Redwood City, California, has been engaged in the retail sale and service of automobiles. During the 12-month period ending May 31, 1999, the Respondent, in conducting its business operations described above, derived gross revenues in excess of $500,000, and purchased and received at its Redwood City, California facility goods valued at more than $5000 directly from points outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held July 22, 1999, the Union was certified on July 30, 1999, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time journeyman service technicians and service technician trainees employed by the Employer at its Redwood City, California facility; excluding service advisors, booker/warranty clerks, detailer/porter/lot attendants, parts counterpersons, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since August 3, 1999, the Union has requested the Respondent to bargain and, since August 27 and September 17, 1999, the Union has requested the Respondent to furnish information. Since August 30, 1999, the Respondent has refused to bargain with the Union and since September 17, 1999, the Respondent has refused to furnish the Union with the requested information. We find that these refusals constitute unlawful refusals to bargain in violation of Section 8(a)(5) and (1) of the Act.[4]

CONCLUSION OF LAW

By refusing on and after August 30, 1999, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and by refusing since September 17, 1999, to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested in its letters of August 27 and September 17, 1999.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co*., 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co*., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Carriage Enterprises Ltd. d/b/a Land Rover Redwood City, Redwood City, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Machinists Automotive Trades District Lodge No. 190, Local Lodge No. 1414, International Association of Machinists and Aerospace Workers, AFL–CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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no agreement can be reached, the Union is entitled in any event to access to records from which it can reasonably compile the information. If any dispute arises in applying these guidelines, it will be treated at the compliance stage of these proceedings.

Finally, the Respondent's contention that the Union made the information request in bad faith does not raise an issue warranting a hearing. The requirement that an information request be made in good faith is satisfied if at least one reason for the demand can be justified. *Island Creek Coal Co.*, 292 NLRB 480, 489 (1989), enfd. 899 F.2d 1222 (6th Cir. 1990). Here, as discussed above, the newly certified union sought information that is presumptively relevant for purposes of collective bargaining, and, accordingly, we find that the good-faith requirement is met.

[4] Member Hurtgen would deny summary judgment with respect to the allegation concerning a refusal to furnish information. He would allow the Respondent to show that the Union's demand was motivated, in substantial part, by bad-faith reasons. He does not necessarily agree with his colleagues that the Union's demand was to be honored if only one of the Union's reasons was in good faith.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time journeyman service technicians and service technician trainees employed by the Employer at its Redwood City, California facility; excluding service advisors, booker/warranty clerks, detailer/porter/lot attendants, parts counterpersons, guards and supervisors as defined in the Act.

(b) Furnish to the Union in a timely fashion the information it requested in its letters of August 27 and September 17, 1999, which information is relevant and necessary to its role as the exclusive representative of the unit employees.

(c) Within 14 days after service by the Region, post at its facility in Redwood City, California, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 20 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 30, 1999.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Machinists Automotive Trades District Lodge No. 190, Local Lodge No. 1414, International Association of Machinists and Aerospace Workers, AFL–CIO, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All full-time and regular part-time journeyman service technicians and service technician trainees employed by us at our Redwood City, California facility; excluding service advisors, booker/warranty clerks, detailer/porter/lot attendants, parts counterpersons, guards and supervisors as defined in the Act.

WE WILL furnish to the Union in a timely fashion the information it requested in its letters dated August 27 and September 17, 1999, which information is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees.

CARRIAGE ENTERPRISES LTD. D/B/A
LAND ROVER REDWOOD CITY

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."